Commissioner of Patents
USSN 10/661,097

AMENDMENTS TO THE DRAWINGS

Please replace sheet containing figures 37a-b with replacement sheet submitted herewith.

Attachment: Replacement sheet.

REMARKS

Claims 1, 2, 14, 15, 17, 18, 21, 22, 27-29 and 39-42 are under examination.

In response to the Outstanding Restriction Requirement, Applicants elect SEQ ID NO: 24 **with traverse**.

The Examiner is now of the opinion that searching the inventions of groups comprising all the different polynucleotide molecules and target sequences will impose a serious search burden. The Examiner is of the opinion that the different oligonucleotides are unrelated.

In this regard, the Applicants believe that an initial search was conducted on subject matter directed to a method for prophylaxis or treatment of HSV-1, HSV-2 or CMV comprising administering at least one oligonucleotide of at least 29 nucleotides in length wherein the antiviral activity of said nucleotide occurs principally by a non-sequence complementary mode of action. The initial search conducted by the Examiner was not restricted to a specific sequence. In response to the outstanding Restriction Requirement dated September 7, 2005, the Applicants elected Group 1, drawn to claims 1, 2, 14-32 for prosecution. A subsequent restriction requirement was emitted on February 1, 2006, wherein it was requested to elect a single virus species.

It is incomprehensible that now the Examiner is of a different opinion since a first restriction requirement was issued on September 7, 2005 wherein no such election of a specific oligonucleotide was required. Further, the present Examiner issued a subsequent restriction requirement on February 1, 2006 wherein she further requested that a single virus be elected. Consequently, even after issuing two previous restriction requirements and further prosecution of the present application, the Examiner is backtracking.

The Applicants are of the opinion that the Examiner is requesting an unreasonable restriction of the scope of protection of the present application to one sequence. The point of invention described and claimed in the present application is related to the disclosure of

phosphorothioated oligonucleotides having an antiviral activity, wherein said antiviral activity occurs principally by a non-sequence complementary mode of action. For example, substantive support can be found for randomer oligonucleotides having antiviral activity in the description (see Examples 1-8). Furthermore, as defined in paragraph [0061] of the present description, the term "randomer" is intended to mean a single-stranded DNA having a wobble (N) at each position, such as NNNNNNNNNN. Each base is synthesized as a wobble, such that the randomer oligonucleotides of the present invention actually consist of a population of different randomly-generated sequences of the same size. By the nature of the preparation used to produce them, a sequence complementary mode of action cannot occur. It is believed that a person skilled in the art would recognize that the common feature between all the oligonucleotides disclosed in Table 1 of the present description is that they all have at least one phosphorothioated linkage that confers the antiviral activity occurring by a non-sequence complementary mode of action. Consequently, Applicants are entitled to claim an oligonucleotide (without reference to a specific sequence) having an antiviral activity occurring principally by a non-sequence complementary mode of action. The Applicants also believe that they could elect REP 2006 as an oligonucleotide to be examined, which corresponds to a randomer of 40 nucleotides in length. Would the Examiner further request electing a single sequence enclosed in the population of sequences found in the randomer to be consistent in her interpretation of the invention? The present invention is independent of the sequence of the oligonucleotide and thus such interpretation is incorrect. Thus restricting the invention to one specific sequence is unreasonable. Reconsideration and withdrawal of the Examiner's rejection are earnestly solicited.

Sequence compliance notice

The Examiner requests that we provide an accompanying SEQ ID NO. for the nucleic acid sequences disclosed in claim 42, as recited in the Notice to Comply. Firstly, the Notice is directed to claim 40, and not 42. The Applicants wish to point out that claim 40 recites the oligonucleotide is selected from the group consisting of REP 2005, REP 2006, REP 2007, REP 2008, SEQ ID NO: 6, SEQ ID NO: 9, REP 2024, SEQ ID NO: 20, SEQ ID NO: 23, SEQ ID NO: 25, SEQ ID NO: 26 and REP 2060. Sequences consisting of REP 2005, REP 2006, REP 2007, REP 2008, REP 2024 and REP 2060 are all randomer oligonucleotides (see

Table 1 of the description). It is stated in 37 CFR 1.821(a) that: *"Sequences with fewer than four specifically defined nucleotides or amino acids are specifically excluded from this section. "Specifically defined" means those amino acids other than "Xaa" and those nucleotide bases other than "n" defined in accordance with the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (1998), including Tables 1 through 6 in Appendix 2, herein incorporated by reference. (Hereinafter "WIPO Standard ST.25 (1998)")."* Since all the nucleotides of REP 2005, REP 2006, REP 2007, REP 2008, REP 2024 and REP 2060 are nucleotide bases defined as "n", these sequences have fewer than four specifically defined nucleotides, and thus are specifically excluded. Consequently, it is believed unnecessary to amend claim 40 to provide an accompanying SEQ ID NO. to REP 2005, REP 2006, REP 2007, REP 2008, REP 2024 and REP 2060. Other recited sequences in claim 40 are identified by a SEQ ID NO. Reconsideration and withdrawal of the Examiner's requisition are earnestly solicited.

The Applicants wish to further point out that the page of the drawings disclosing fig. 37a-b has been amended to refer to the proper SEQ ID NOs. A mistake was made in the last amendment submitted May 18, 2007. Support for the identification of the oligonucleotides is found in paragraph [00143] and Table 1 of the present description. No new matter has been hereby introduced.

No additional fees are believed to be necessitated by this amendment. Should this be in error, authorization is hereby given to charge Deposit Account No. 19-5113 for any underpayment or to credit any overpayment.

In the event that there are any questions concerning this amendment or the application in general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of this application may be expedited.

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Respectfully,

Date: December 20, 2007

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Enc. Replacement sheet for drawings
Extension of time